

SENATE AMENDMENTS

2nd Printing

By: Hilderbran, Murphy, Sheets, Harless

H.B. No. 1223

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.359 to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means at least 100,000 square feet of space in a single building or portion of a single building, which space:

(A) is located in this state;

(B) is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is used by a qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications

1 provider to place tangible personal property that is used to
2 deliver telecommunications services; and

3 (E) has an uninterruptible power source,
4 generator backup power, a sophisticated fire suppression and
5 prevention system, and enhanced physical security that includes
6 restricted access, video surveillance, and electronic systems.

7 (3) "Permanent job" means an employment position that
8 will exist for at least five years after the date the job is
9 created.

10 (4) "Qualifying data center" means a data center that
11 meets the qualifications prescribed by Subsection (d).

12 (5) "Qualifying job" means a full-time, permanent job
13 that pays at least 120 percent of the county average weekly wage in
14 the county in which the job is based.

15 (6) "Qualifying operator" means a person who controls
16 access to a qualifying data center, regardless of whether that
17 person owns each item of tangible personal property located at the
18 qualifying data center. A qualifying operator may also be the
19 qualifying owner.

20 (7) "Qualifying owner" means a person who owns the
21 building in which a qualifying data center is located. A qualifying
22 owner may also be the qualifying operator.

23 (8) "Qualifying occupant" means a person who:

24 (A) contracts with a qualifying owner or
25 qualifying operator to place, or cause to be placed, and to use
26 tangible personal property at the qualifying data center; or

27 (B) in the case of a qualifying occupant who is

1 also the qualifying owner and the qualifying operator, places or
2 causes to be placed, and uses tangible personal property at the
3 qualifying data center.

4 (b) Except as otherwise provided this section, tangible
5 personal property that is necessary and essential to the operation
6 of a qualified data center is exempted from the taxes imposed by
7 this chapter if the tangible personal property is purchased for
8 installation at, incorporation into, or in the case of Subdivision
9 (1), use in a qualifying data center by a qualifying owner,
10 qualifying operator, or qualifying occupant, and the tangible
11 personal property is:

12 (1) electricity;
13 (2) an electrical system;
14 (3) a cooling system;
15 (4) an emergency generator;
16 (5) hardware or a distributed mainframe computer or
17 server;

18 (6) a data storage device;
19 (7) network connectivity equipment;
20 (8) a rack, cabinet, and raised floor system;
21 (9) a peripheral component or system;
22 (10) software;
23 (11) a mechanical, electrical, or plumbing system that
24 is necessary to operate any tangible personal property described by
25 Subdivisions (2)-(10);

26 (12) any other item of equipment or system necessary
27 to operate any tangible personal property described by Subdivisions

1 (2)-(11), including a fixture; and

2 (13) a component part of any tangible personal
3 property described by Subdivisions (2)-(10).

4 (c) The exemption provided by this section does not apply
5 to:

6 (1) office equipment or supplies;

7 (2) maintenance or janitorial supplies or equipment;

8 (3) equipment or supplies used primarily in sales
9 activities or transportation activities;

10 (4) tangible personal property on which the purchaser
11 has received or has a pending application for a refund under Section
12 151.429;

13 (5) tangible personal property not otherwise exempted
14 under Subsection (b) that is incorporated into real estate or into
15 an improvement of real estate;

16 (6) tangible personal property that is rented or
17 leased for a term of one year or less; or

18 (7) notwithstanding Section 151.3111, a taxable
19 service that is performed on tangible personal property exempted
20 under this section.

21 (d) Subject to Subsection (k), a data center may be
22 certified by the comptroller as a qualifying data center for
23 purposes of this section if, on or after September 1, 2013:

24 (1) a single qualifying occupant:

25 (A) contracts with a qualifying owner or
26 qualifying operator to lease space in which the qualifying occupant
27 will locate a data center; or

1 (B) occupies a space that was not previously used
2 as a data center in which the qualifying occupant will locate a data
3 center, in the case of a qualifying occupant who is also the
4 qualifying operator and the qualifying owner; and

5 (2) the qualifying owner, qualifying operator, or
6 qualifying occupant, jointly or independently:

7 (A) creates at least 20 qualifying jobs in the
8 county in which the data center is located, not including jobs moved
9 from one county in this state to another county in this state; and

10 (B) makes or agrees to make a capital investment,
11 on or after September 1, 2013, of at least \$150 million in that
12 particular data center over a five-year period beginning on the
13 date the data center is certified by the comptroller as a qualifying
14 data center.

15 (e) A data center that is eligible under Subsection (d) to
16 be certified by the comptroller as a qualified data center shall
17 apply to the comptroller for certification as a qualifying data
18 center and for issuance of a registration number or numbers by the
19 comptroller. The application must be made on a form prescribed by
20 the comptroller and include the information required by the
21 comptroller. The application must include the name and contact
22 information for the qualifying occupant and, if applicable, the
23 name and contact information for the qualifying owner and the
24 qualifying operator who will claim the exemption authorized under
25 this section. The application form must include a section for the
26 applicant to certify that the capital investment required by
27 Subsection (d)(2)(B) will be met independently or jointly by the

1 qualifying occupant, qualifying owner, or qualifying operator
2 within the time period prescribed by Subsection (d)(2)(B).

3 (f) The exemption provided by this section begins on the
4 date the data center is certified by the comptroller as a qualifying
5 data center and expires:

6 (1) on the 10th anniversary of that date, if the
7 qualifying occupant, qualifying owner, or qualifying operator
8 independently or jointly makes a capital investment of at least
9 \$150 million but less than \$200 million as provided by Subsection
10 (d)(2)(B); or

11 (2) on the 15th anniversary of that date, if the
12 qualifying occupant, qualifying owner, or qualifying operator
13 independently or jointly makes a capital investment of \$200 million
14 or more as provided by Subsection (d)(2)(B).

15 (g) Each person who is eligible to claim an exemption
16 authorized by this section must hold a registration number issued
17 by the comptroller. The registration number must be stated on the
18 exemption certificate provided by the purchaser to the seller of
19 tangible personal property eligible for the exemption.

20 (h) The comptroller shall revoke all registration numbers
21 issued in connection with a qualifying data center that the
22 comptroller determines does not meet the requirements prescribed by
23 Subsection (d). Each person who has the person's registration
24 number revoked by the comptroller is liable for taxes, including
25 penalty and interest from the date of purchase, imposed under this
26 chapter on purchases for which the person claimed an exemption
27 under this section, regardless of whether the purchase occurred

1 before the date the registration number was revoked.

2 (i) The comptroller shall adopt rules consistent with and
3 necessary to implement this section, including rules relating to:

4 (1) a qualifying data center, qualifying owner,
5 qualifying operator, and qualifying occupant;

6 (2) issuance and revocation of a registration number
7 required under this section; and

8 (3) reporting and other procedures necessary to ensure
9 that a qualifying data center, qualifying owner, qualifying
10 operator, and qualifying occupant comply with this section and
11 remain entitled to the exemption authorized by this section.

12 (j) The exemption in this section does not apply to the
13 taxes imposed under Chapter 321, 322, or 323.

14 (k) A data center is not eligible to receive an exemption
15 under this section if the data center is subject to an agreement
16 limiting the appraised value of the data center's property under
17 Subchapter B or C, Chapter 313.

18 SECTION 2. Sections 151.317(a), (b), and (d), Tax Code, are
19 amended to read as follows:

20 (a) Subject to Sections 151.359 and ~~[Section]~~ 151.1551 and
21 Subsection (d) of this section, gas and electricity are exempted
22 from the taxes imposed by this chapter when sold for:

23 (1) residential use;

24 (2) use in powering equipment exempt under Section
25 151.318 or 151.3185 by a person processing tangible personal
26 property for sale as tangible personal property, other than
27 preparation or storage of prepared food described by Section

151.314(c-2);

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(9) use directly by a data center that is certified by the comptroller as a qualifying data center under Section 151.359 in the processing, storage, and distribution of data;

(10) ~~[(9)]~~ a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(11) ~~[(10)]~~ use in timber operations, including

1 pumping for irrigation of timberland.

2 (b) The sale, production, distribution, lease, or rental
3 of, and the use, storage, or other consumption in this state of, gas
4 and electricity sold for the uses listed in Subsection (a), are
5 exempted from the taxes imposed by a municipality under Chapter 321
6 except as provided by Sections 151.359(j) and [Section] 321.105.

7 (d) To qualify for the exemptions in Subsections (a)(2)-(9)
8 [~~(a)(2)-(8)~~], the gas or electricity must be sold to the person
9 using the gas or electricity in the exempt manner. For purposes of
10 this subsection, the use of gas or electricity in an exempt manner
11 by an independent contractor engaged by the purchaser of the gas or
12 electricity to perform one or more of the exempt activities
13 identified in Subsections (a)(2)-(9) [~~(a)(2)-(8)~~] is considered
14 use by the purchaser of the gas or electricity.

15 SECTION 3. Section 151.1551(a), Tax Code, is amended to
16 read as follows:

17 (a) This section applies to an exemption provided by:

18 (1) Sections 151.316(a)(6), (7), (8), (10), (11), and
19 (12);

20 (2) Section 151.316(b) for tangible personal property
21 used in the production of agricultural products for sale;

22 (3) Section 151.3162(b) for tangible personal
23 property used in the production of timber for sale;

24 (4) Sections 151.317(a)(5) and (11) [~~(10)~~] for
25 electricity used in agriculture or timber operations; and

26 (5) Section 151.3111 for services performed on
27 tangible personal property exempted under Section 151.316(a)(6),

(7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

SECTION 4. Subchapter A, Chapter 313, Tax Code, is amended by adding Section 313.010 to read as follows:

Sec. 313.010. CERTAIN ENTITIES INELIGIBLE. An entity that has been issued a registration number under Section 151.359 is not eligible to receive a limitation on appraised value under this chapter.

SECTION 5. Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and [Section] 151.317(b).

SECTION 6. Section 323.207, Tax Code, is amended to read as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and [Section] 151.317(b).

SECTION 7. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 8. This Act takes effect September 1, 2013.

ADOPTED

MAY 22 2013

Atty. Gen.
Secretary of the Senate

By: *Steve Hegar*

H .B. No. 1223

Substitute the following for H .B. No. 1223:

By: *Hegar*

C.S. H .B. No. 1223

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.359 to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means at least 100,000 square feet of space in a single building or portion of a single building, which space:

(A) is located in this state;

(B) is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a

1 telecommunications provider to place tangible personal property
2 that is used to deliver telecommunications services; and

3 (E) has an uninterruptible power source,
4 generator backup power, a sophisticated fire suppression and
5 prevention system, and enhanced physical security that includes
6 restricted access, video surveillance, and electronic systems.

7 (3) "Permanent job" means an employment position that
8 will exist for at least five years after the date the job is
9 created.

10 (4) "Qualifying data center" means a data center that
11 meets the qualifications prescribed by Subsection (d).

12 (5) "Qualifying job" means a full-time, permanent job
13 that pays at least 120 percent of the county average weekly wage
14 in the county in which the job is based.

15 (6) "Qualifying operator" means a person who controls
16 access to a qualifying data center, regardless of whether that
17 person owns each item of tangible personal property located at
18 the qualifying data center. A qualifying operator may also be
19 the qualifying owner.

20 (7) "Qualifying owner" means a person who owns the
21 building in which a qualifying data center is located. A
22 qualifying owner may also be the qualifying operator.

23 (8) "Qualifying occupant" means a person who:

24 (A) contracts with a qualifying owner or
25 qualifying operator to place, or cause to be placed, and to use
26 tangible personal property at the qualifying data center; or

27 (B) in the case of a qualifying occupant who is

1 also the qualifying owner and the qualifying operator, places or
2 causes to be placed, and uses tangible personal property at the
3 qualifying data center.

4 (b) Except as otherwise provided this section, tangible
5 personal property that is necessary and essential to the
6 operation of a qualified data center is exempted from the taxes
7 imposed by this chapter if the tangible personal property is
8 purchased for installation at, incorporation into, or in the
9 case of Subdivision (1), use in a qualifying data center by a
10 qualifying owner, qualifying operator, or qualifying occupant,
11 and the tangible personal property is:

12 (1) electricity;

13 (2) an electrical system;

14 (3) a cooling system;

15 (4) an emergency generator;

16 (5) hardware or a distributed mainframe computer or
17 server;

18 (6) a data storage device;

19 (7) network connectivity equipment;

20 (8) a rack, cabinet, and raised floor system;

21 (9) a peripheral component or system;

22 (10) software;

23 (11) a mechanical, electrical, or plumbing system

24 that is necessary to operate any tangible personal property
25 described by Subdivisions (2)-(10);

26 (12) any other item of equipment or system necessary
27 to operate any tangible personal property described by

1 Subdivisions (2)-(11), including a fixture; and

2 (13) a component part of any tangible personal
3 property described by Subdivisions (2)-(10).

4 (c) The exemption provided by this section does not apply
5 to:

6 (1) office equipment or supplies;

7 (2) maintenance or janitorial supplies or equipment;

8 (3) equipment or supplies used primarily in sales
9 activities or transportation activities;

10 (4) tangible personal property on which the purchaser
11 has received or has a pending application for a refund under
12 Section 151.429;

13 (5) tangible personal property not otherwise exempted
14 under Subsection (b) that is incorporated into real estate or
15 into an improvement of real estate;

16 (6) tangible personal property that is rented or
17 leased for a term of one year or less; or

18 (7) notwithstanding Section 151.3111, a taxable
19 service that is performed on tangible personal property exempted
20 under this section.

21 (d) Subject to Subsection (k), a data center may be
22 certified by the comptroller as a qualifying data center for
23 purposes of this section if, on or after September 1, 2013:

24 (1) a single qualifying occupant:

25 (A) contracts with a qualifying owner or
26 qualifying operator to lease space in which the qualifying
27 occupant will locate a data center; or

1 (B) occupies a space that was not previously
2 used as a data center in which the qualifying occupant will
3 locate a data center, in the case of a qualifying occupant who
4 is also the qualifying operator and the qualifying owner; and

5 (2) the qualifying owner, qualifying operator, or
6 qualifying occupant, jointly or independently:

7 (A) creates at least 20 qualifying jobs in the
8 county in which the data center is located, not including jobs
9 moved from one county in this state to another county in this
10 state; and

11 (B) makes or agrees to make a capital
12 investment, on or after September 1, 2013, of at least \$200
13 million in that particular data center over a five-year period
14 beginning on the date the data center is certified by the
15 comptroller as a qualifying data center.

16 (e) A data center that is eligible under Subsection (d) to
17 be certified by the comptroller as a qualified data center shall
18 apply to the comptroller for certification as a qualifying data
19 center and for issuance of a registration number or numbers by
20 the comptroller. The application must be made on a form
21 prescribed by the comptroller and include the information
22 required by the comptroller. The application must include the
23 name and contact information for the qualifying occupant and, if
24 applicable, the name and contact information for the qualifying
25 owner and the qualifying operator who will claim the exemption
26 authorized under this section. The application form must
27 include a section for the applicant to certify that the capital

1 investment required by Subsection (d)(2)(B) will be met
2 independently or jointly by the qualifying occupant, qualifying
3 owner, or qualifying operator within the time period prescribed
4 by Subsection (d)(2)(B).

5 (f) The exemption provided by this section begins on the
6 date the data center is certified by the comptroller as a
7 qualifying data center and expires:

8 (1) on the 10th anniversary of that date, if the
9 qualifying occupant, qualifying owner, or qualifying operator
10 independently or jointly makes a capital investment of at least
11 \$200 million but less than \$250 million as provided by
12 Subsection (d)(2)(B); or

13 (2) on the 15th anniversary of that date, if the
14 qualifying occupant, qualifying owner, or qualifying operator
15 independently or jointly makes a capital investment of \$250
16 million or more as provided by Subsection (d)(2)(B).

17 (g) Each person who is eligible to claim an exemption
18 authorized by this section must hold a registration number
19 issued by the comptroller. The registration number must be
20 stated on the exemption certificate provided by the purchaser to
21 the seller of tangible personal property eligible for the
22 exemption.

23 (h) The comptroller shall revoke all registration numbers
24 issued in connection with a qualifying data center that the
25 comptroller determines does not meet the requirements prescribed
26 by Subsection (d). Each person who has the person's
27 registration number revoked by the comptroller is liable for

1 taxes, including penalty and interest from the date of purchase,
2 imposed under this chapter on purchases for which the person
3 claimed an exemption under this section, regardless of whether
4 the purchase occurred before the date the registration number
5 was revoked.

6 (i) The comptroller shall adopt rules consistent with and
7 necessary to implement this section, including rules relating
8 to:

9 (1) a qualifying data center, qualifying owner,
10 qualifying operator, and qualifying occupant;

11 (2) issuance and revocation of a registration number
12 required under this section; and

13 (3) reporting and other procedures necessary to
14 ensure that a qualifying data center, qualifying owner,
15 qualifying operator, and qualifying occupant comply with this
16 section and remain entitled to the exemption authorized by this
17 section.

18 (j) The exemption in this section does not apply to the
19 taxes imposed under Chapter 321, 322, or 323.

20 (k) A data center is not eligible to receive an exemption
21 under this section if the data center is subject to an agreement
22 limiting the appraised value of the data center's property under
23 Subchapter B or C, Chapter 313.

24 SECTION 2. Sections 151.317(a), (b), and (d), Tax Code,
25 are amended to read as follows:

26 (a) Subject to Sections 151.359 and ~~[Section]~~ 151.1551 and
27 Subsection (d) of this section, gas and electricity are exempted

1 from the taxes imposed by this chapter when sold for:

2 (1) residential use;

3 (2) use in powering equipment exempt under Section
4 151.318 or 151.3185 by a person processing tangible personal
5 property for sale as tangible personal property, other than
6 preparation or storage of prepared food described by Section
7 151.314(c-2);

8 (3) use in lighting, cooling, and heating in the
9 manufacturing area during the actual manufacturing or processing
10 of tangible personal property for sale as tangible personal
11 property, other than preparation or storage of prepared food
12 described by Section 151.314(c-2);

13 (4) use directly in exploring for, producing, or
14 transporting, a material extracted from the earth;

15 (5) use in agriculture, including dairy or poultry
16 operations and pumping for farm or ranch irrigation;

17 (6) use directly in electrical processes, such as
18 electroplating, electrolysis, and cathodic protection;

19 (7) use directly in the off-wing processing,
20 overhaul, or repair of a jet turbine engine or its parts for a
21 certificated or licensed carrier of persons or property;

22 (8) use directly in providing, under contracts with
23 or on behalf of the United States government or foreign
24 governments, defense or national security-related electronics,
25 classified intelligence data processing and handling systems, or
26 defense-related platform modifications or upgrades;

27 (9) use directly by a data center that is certified

1 by the comptroller as a qualifying data center under Section
2 151.359 in the processing, storage, and distribution of data;

3 (10) [(+9)] a direct or indirect use, consumption, or
4 loss of electricity by an electric utility engaged in the
5 purchase of electricity for resale; or

6 (11) [(+10)] use in timber operations, including
7 pumping for irrigation of timberland.

8 (b) The sale, production, distribution, lease, or rental
9 of, and the use, storage, or other consumption in this state of,
10 gas and electricity sold for the uses listed in Subsection (a),
11 are exempted from the taxes imposed by a municipality under
12 Chapter 321 except as provided by Sections 151.359(j) and
13 [Section] 321.105.

14 (d) To qualify for the exemptions in Subsections (a)(2)-
15 (9) [(a)(2)-(8)], the gas or electricity must be sold to the
16 person using the gas or electricity in the exempt manner. For
17 purposes of this subsection, the use of gas or electricity in an
18 exempt manner by an independent contractor engaged by the
19 purchaser of the gas or electricity to perform one or more of
20 the exempt activities identified in Subsections (a)(2)-(9)
21 [(a)(2)-(8)] is considered use by the purchaser of the gas or
22 electricity.

23 SECTION 3. Section 151.1551(a), Tax Code, is amended to
24 read as follows:

25 (a) This section applies to an exemption provided by:

26 (1) Sections 151.316(a)(6), (7), (8), (10), (11), and
27 (12);

1 (2) Section 151.316(b) for tangible personal property
2 used in the production of agricultural products for sale;

3 (3) Section 151.3162(b) for tangible personal
4 property used in the production of timber for sale;

5 (4) Sections 151.317(a)(5) and (11) ~~[(+10)]~~ for
6 electricity used in agriculture or timber operations; and

7 (5) Section 151.3111 for services performed on
8 tangible personal property exempted under Section 151.316(a)(6),
9 (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

10 SECTION 4. Subchapter A, Chapter 313, Tax Code, is amended
11 by adding Section 313.010 to read as follows:

12 Sec. 313.010. CERTAIN ENTITIES INELIGIBLE. An entity that
13 has been issued a registration number under Section 151.359 is
14 not eligible to receive a limitation on appraised value under
15 this chapter.

16 SECTION 5. Section 321.208, Tax Code, is amended to read
17 as follows:

18 Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions
19 provided by Subchapter H, Chapter 151, apply to the taxes
20 authorized by this chapter, except as provided by Sections
21 151.359(j) and [Section] 151.317(b).

22 SECTION 6. Section 323.207, Tax Code, is amended to read
23 as follows:

24 Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions
25 provided by Subchapter H, Chapter 151, apply to the taxes
26 authorized by this chapter, except as provided by Sections
27 151.359(j) and [Section] 151.317(b).

1 SECTION 7. The change in law made by this Act does not
2 affect tax liability accruing before the effective date of this
3 Act. That liability continues in effect as if this Act had not
4 been enacted, and the former law is continued in effect for the
5 collection of taxes due and for civil and criminal enforcement
6 of the liability for those taxes.

7 SECTION 8. This Act takes effect September 1, 2013.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (Relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), As Passed 2nd House

Estimated Two-year Net Impact to General Revenue Related Funds for HB1223, As Passed 2nd House: a negative impact of (\$14,600,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from General Revenue Fund 1
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

Fiscal Analysis

The bill would amend Chapters 151 and 313, Tax Code, to provide a sales tax exemption for certain property used in certain data centers.

"Data center" would mean at least 100,000 square feet of space in a single building or portion of a single building, which space: is located in this state; is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage and distribution of data; is used by a single qualifying occupant for the

processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and enhanced physical security.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying data center" if, on or after September 1, 2013, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently create at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$200 million in that particular data center over a five-year period beginning on the date the data center is certified as a qualifying data center.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a qualifying data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate, tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under Section 151.359.

The exemption would expire on the tenth anniversary of the date a qualifying data center was certified if the capital investment used to qualify the center was at least \$200 million but less than \$250 million, and would expire on the fifteenth anniversary of that data center if the capital investment was \$250 million or more.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A data center subject to an agreement limiting appraised value under Subchapter B or C, Chapter 313, would not be eligible for exemption under Section 151.359, and an entity with a registration number under Section 151.359 would not be eligible to receive a limitation on appraisal under Chapter 313.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a qualifying data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.359.

This bill would take effect September 1, 2013.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be exempt under the provisions of the bill. It is expected that on average a new single-occupancy data center that would meet the 100,000 square foot minimum and the five year \$200 million capital investment commitment would occur at a rate of .8 each year, or once every 15 months, under current law without the provision of the tax incentive proposed in the bill.

Compared with previous versions of the bill, this committee report limits each qualifying data center to one occupant as did the House committee report, and increases the capital investment minimum to \$200 million within a 5 year period versus \$150 million in the House engrossment.

Because the definition of data center provides for use of at least 100,000 square feet in a single building or portion of a single building, this fiscal analysis assumes that while a qualifying data center has only a single occupant, more than one qualifying data center may be located in a single building provided the building is large enough to contain multiple 100,000 square foot occupants. In the event of more than one qualifying data center in a single building it is assumed that the job creation and capital investment commitment requirements prescribed by Section 151.359(d)(2) must be met by each qualifying data center separately and that any capital investment by a qualifying owner or qualifying operator in support of the operation of more than one qualifying data center must be equitably allocated between or among the data centers for purposes of meeting their respective capital investment requirements under Section 151.359(d)(2)(B).

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 18, 2013

TO: Honorable Tommy Williams, Chair, Senate Committee on Finance

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1223, Committee Report 2nd House, Substituted: a negative impact of (\$14,600,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from General Revenue Fund 1
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

Fiscal Analysis

The bill would amend Chapters 151 and 313, Tax Code, to provide a sales tax exemption for certain property used in certain data centers.

"Data center" would mean at least 100,000 square feet of space in a single building or portion of a single building, which space: is located in this state; is specifically constructed or refurbished and

actually used primarily to house servers and related equipment and support staff for the processing, storage and distribution of data; is used by a single qualifying occupant for the processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and enhanced physical security.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying data center" if, on or after September 1, 2013, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently create at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$200 million in that particular data center over a five-year period beginning on the date the data center is certified as a qualifying data center.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a qualifying data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate, tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under Section 151.359.

The exemption would expire on the tenth anniversary of the date a qualifying data center was certified if the capital investment used to qualify the center was at least \$200 million but less than \$250 million, and would expire on the fifteenth anniversary of that data center if the capital investment was \$250 million or more.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A data center subject to an agreement limiting appraised value under Subchapter B or C, Chapter 313, would not be eligible for exemption under Section 151.359, and an entity with a registration number under Section 151.359 would not be eligible to receive a limitation on appraisal under Chapter 313.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a qualifying data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose

registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.359.

This bill would take effect September 1, 2013.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be exempt under the provisions of the bill. It is expected that on average a new single-occupancy data center that would meet the 100,000 square foot minimum and the five year \$200 million capital investment commitment would occur at a rate of .8 each year, or once every 15 months, under current law without the provision of the tax incentive proposed in the bill.

Compared with previous versions of the bill, this committee report limits each qualifying data center to one occupant as did the House committee report, and increases the capital investment minimum to \$200 million within a 5 year period versus \$150 million in the House engrossment.

Because the definition of data center provides for use of at least 100,000 square feet in a single building or portion of a single building, this fiscal analysis assumes that while a qualifying data center has only a single occupant, more than one qualifying data center may be located in a single building provided the building is large enough to contain multiple 100,000 square foot occupants. In the event of more than one qualifying data center in a single building it is assumed that the job creation and capital investment commitment requirements prescribed by Section 151.359(d)(2) must be met by each qualifying data center separately and that any capital investment by a qualifying owner or qualifying operator in support of the operation of more than one qualifying data center must be equitably allocated between or among the data centers for purposes of meeting their respective capital investment requirements under Section 151.359(d)(2)(B).

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 14, 2013

TO: Honorable Tommy Williams, Chair, Senate Committee on Finance

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (Relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1223, As Engrossed: a negative impact of (\$83,500,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$26,800,000)
2015	(\$56,700,000)
2016	(\$82,500,000)
2017	(\$105,100,000)
2018	(\$107,700,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from General Revenue Fund 1
2014	(\$26,800,000)
2015	(\$56,700,000)
2016	(\$82,500,000)
2017	(\$105,100,000)
2018	(\$107,700,000)

Fiscal Analysis

The bill would amend Chapters 151 and 313, Tax Code, to provide a sales tax exemption for certain property used in certain data centers.

"Data center" would mean at least 100,000 square feet of space in a single building or portion of a single building, which space: is located in this state; is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the

processing, storage and distribution of data; is used by a qualifying occupant for the processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and enhanced physical security.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying data center" if, on or after September 1, 2013, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently create at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in that particular data center over a five-year period beginning on the date the data center is certified as a qualifying data center.

The bill would exempt from sales tax tangible personal property that is necessary and essential to the operation of a qualifying data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate, tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under Section 151.359.

The exemption would expire on the tenth anniversary of the date a qualifying data center was certified if the capital investment used to qualify the center was at least \$150 million but less than \$200 million, and would expire on the fifteenth anniversary of that data center if the capital investment was \$200 million or more.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A data center subject to an agreement limiting appraised value under Subchapter B or C, Chapter 313, would not be eligible for exemption under Section 151.359, and an entity with a registration number under Section 151.359 would not be eligible to receive a limitation on appraisal under Chapter 313.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a qualifying data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.359.

This bill would take effect September 1, 2013.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be exempt under the provisions of the bill. It is expected that on average one new single-occupancy data center that would meet the 100,000 square foot minimum and the five year \$150 million capital investment commitment would occur each year under current law, without the provision of the tax incentive proposed in the bill.

The House committee report included a limitation of a qualifying data center to a single occupant. The engrossment omits that limitation. Therefore it is assumed that multi-tenant data centers would qualify for exemption and that data center users of insufficient size to qualify for exemption on a stand-alone basis would qualify for exemption as tenants in multi-tenant arrangements.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1223, Committee Report 1st House, Substituted: a negative impact of (\$18,200,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$6,700,000)
2015	(\$11,500,000)
2016	(\$13,800,000)
2017	(\$19,700,000)
2018	(\$21,100,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1
2014	(\$6,700,000)
2015	(\$11,500,000)
2016	(\$13,800,000)
2017	(\$19,700,000)
2018	(\$21,100,000)

Fiscal Analysis

This bill would amend Chapter 151, Tax Code, regarding the sales and use tax, by adding a new Section 151.359 to provide an exemption for certain property used in certain data centers.

"Data center" would mean at least 100,000 square feet of space in a single building or portion of a single building, which space: is located in this state; is specifically constructed or refurbished and

actually used primarily to house servers and related equipment and support staff for the processing, storage and distribution of data; is used by a single qualifying occupant for the processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and enhanced physical security.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying data center" if, on or after September 1, 2013, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently create at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in that particular data center over a five-year period beginning on the date the data center is certified as a qualifying data center.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a qualifying data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate, tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under Section 151.359.

The exemption would expire on the tenth anniversary of the date a qualifying data center was certified if the capital investment used to qualify the center was at least \$150 million but less than \$200 million, and would expire on the fifteenth anniversary of that data center if the capital investment was \$200 million or more.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a qualifying data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.359.

This bill would take effect September 1, 2013.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be exempt under the provisions of the bill. It is expected that on average one new data center that would meet the 100,000 square foot minimum and the five year \$150 million capital investment commitment would occur each year under current law, without the provision of the tax incentive proposed in the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated. The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 18, 2013

TO: Honorable Harvey Hilderbran, Chair, House Committee On Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (Relating to tax incentives with respect to certain data centers.),
As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB1223, As Introduced: a negative impact of (\$50,800,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	\$0
2015	(\$50,800,000)
2016	(\$104,100,000)
2017	(\$147,900,000)
2018	(\$193,500,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from General Revenue Fund 1	Probable Revenue (Loss) from Cities	Probable Revenue (Loss) from Transit Authorities	Probable Revenue (Loss) from Counties and Special Districts
2014	\$0	\$0	\$0	\$0
2015	(\$50,800,000)	(\$9,400,000)	(\$3,200,000)	(\$1,600,000)
2016	(\$104,100,000)	(\$19,200,000)	(\$6,500,000)	(\$3,300,000)
2017	(\$147,900,000)	(\$27,300,000)	(\$9,300,000)	(\$4,600,000)
2018	(\$193,500,000)	(\$35,700,000)	(\$12,100,000)	(\$6,100,000)

Fiscal Analysis

The bill would amend Chapter 151 of the Tax Code, by adding a new Section 151.4292 to provide for refunds of sales and use tax related to qualifying data centers; and Chapter 313 of the Tax Code, to provide for eligibility of such qualifying data centers for a limitation on appraised value.

The bill would add new Section 151.4292 to provide that a qualifying data center, a qualifying

operator, and a qualifying tenant would be entitled to receive a refund on an annual basis of sales and use taxes paid on the purchase of certain tangible personal property.

A data center would be defined to be a facility: 1) located in this state; 2) composed of a single building or a portion thereof specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data; and 3) that meets other standards related to power supply, fire suppression, and enhanced physical security.

A qualifying data center would be one that: 1) in combination with an operator of the data center or a tenant of the data center, creates at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in this state related to improvements to real and tangible personal property installed at the data center over a four-year period after initial construction or refurbishing of the data center facility.

A qualifying operator would be a person who controls access to a qualifying data center, regardless of ownership of the items of tangible personal property at the data center. A qualifying tenant would be a person who contracts with a qualifying operator to place or cause to be placed and to use tangible personal property at a qualifying data center.

A qualifying data center, qualifying operator, and qualifying tenant would be entitled to a refund of taxes paid on tangible personal property that is necessary to manage or operate the data center, including: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from eligibility for refund would be tax paid on office equipment or supplies, equipment or supplies used primarily in sales or distribution activities or in transportation activities, or property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects). The amount of refund of taxes with respect to an eligible item of tangible personal property would be the greater of the amount by which the tax paid exceeds the amount of tax that would have been paid at a rate of one percent, or the amount by which the tax exceeds \$80.

If the capital investment used to qualify a data center is at least \$150 million but less than \$200 million, the qualifying data center, operator, and tenants are eligible for tax refunds on purchases during a period beginning with the date the data center becomes a qualifying data center or the date a tenant becomes a qualifying tenant and before the 10th anniversary of the date of qualification; if the capital investment is \$200 million or more, the refunds are for taxes on purchases beginning on the date of qualification and before the 15th anniversary of the date of qualification.

The refunds are to be administered on an annual basis. The Comptroller is provided rulemaking authority necessary to implement the new Section 151.4292. While this authority includes rules relating to qualification and disqualification for refunds, there is no explicit authority to require repayment to the state of refunds received by qualifying data centers, operators, and tenants in the event the capital investment requirement is not met within the four year period required by new Section 151.4292(d)(2).

Section 313.024(b), Tax Code, is amended to include a data center that is eligible to receive a tax

refund under Section 151.4292 among the entities eligible for a limitation on appraised value for school district property taxation under the Texas Economic Development Act.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be eligible for refund under the provisions of the bill.

As the definition of data center is not limited to those located in the state after September 1, 2013, and the act of refurbishing a data center is a potentially nominal threshold to meet with respect to qualifying a data center and inaugurating a four-year period of capital investment after September 1, 2013, it is expected that prospective expenditures on tangible personal property in relation to existing data centers would be eligible for the refunds. Additionally, it is expected that at least three new data centers that would, in combination with expenditures by tenants, meet the capital investment requirement would begin construction each year under current law, without the provision of the tax refund incentive proposed in the bill.

As the bill provides for expenditures of data centers, data center operators, and data center tenants to be aggregated for purposes of meeting the capital investment threshold, it is expected that businesses whose data operations entail expenditures insufficient to meet the capital investment threshold for the tax refunds would be induced to migrate into colocation arrangements so that their expenditures, when aggregated with those of other tenants and a data center, would qualify for the refunds. That is, it is expected that ongoing expenditures for data operations that are currently taxable and that would remain taxable under current business arrangements would be diverted into arrangements eligible for the tax refunds.

The term "capital investment" is not defined; it is assumed that expenditures on any items with a useful life in excess of one year, including installation costs, would be claimed as capital investment.

The limitation of tax to \$80 per item would be difficult to administer and significantly reduces the amount of revenue that otherwise would be collected under the one percent rate of tax otherwise provided by the bill.

As the bill allows an exemption for items used in data centers—either new or refurbished structures—it is possible that some data centers built after the effective date of this bill would qualify repeatedly and thus be exempt indefinitely, regardless of Section 151.4292 (f).

Because the refunds are to be administered on an annual basis, there would be no fiscal implications during fiscal 2014.

As Subchapters B and C of Tax Code Chapter 313 expire on December 31, 2014, the broadening of the eligibility criteria for participation in the Chapter 313 program would only affect two future annual “classes” of Chapter 313 projects—those with a first complete year of their qualifying time period in tax year 2014, and those with a first complete year of their qualifying time period in tax year 2015.

It is unknown how many school districts will enter into Chapter 313 agreements with data centers; therefore the fiscal impact cannot be determined at this time. The following example is provided for an estimate of the magnitude of the fiscal impacts. This example assumes an increased participation in the program of two data center projects per future annual class,

resulting in four additional Chapter 313 projects before the program expires.

Because the first two years of tax benefit for a Chapter 313 project flow through an annual tax credit paid beginning in the fourth year of a project, the state fiscal impact for these four projects would begin after three years, starting in tax year 2016, with associated state impact beginning in state fiscal year 2017 and continuing through state fiscal year 2025. The estimated annual school district Maintenance and Operations (M&O) property tax levy losses would be approximately \$3.05 million in fiscal year 2017 and \$6 million in fiscal year 2018 if two data center projects per year become eligible for participation in Texas Economic Development Act before the expiration of Chapter 313, with the annual loss slightly declining from \$6 million in each fiscal year after 2018, falling to zero by 2026.

The state would incur cost under the Foundation School Program (FSP) corresponding to local M&O revenue losses. For FY17, state cost would depend upon whether affected districts receive hold harmless state aid. On average, estimated state cost for FY17 would be equal to approximately 65% of school districts' FY17 local M&O levy loss, or \$1.98 million. Upon expiration of the FSP hold harmless at the end of FY17, state cost to the FSP beginning with FY18 and each year thereafter would be roughly equal to the prior year's local M&O levy loss.

Local Government Impact

There could be a corresponding loss of sales and use tax revenue to local taxing jurisdictions. It is not clear whether the entitlement to refunds includes refunds of local sales and used taxes; this fiscal note includes implications for local governments under the interpretation that they are subject to refund.

School districts entering into Chapter 313 agreements involving data centers would benefit from additional Foundation School Program state aid or reductions in recapture corresponding to losses in local M&O revenue resulting from the limitation on taxable value of affected property. Affected school districts would also be eligible for state reimbursement for amounts remitted in the form of tax credits resulting from taxes paid on affected property during the first two years of the agreement.

Source Agencies: 304 Comptroller of Public Accounts, 701 Central Education Agency

LBB Staff: UP, KK, JSc

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: UP, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

83RD LEGISLATIVE REGULAR SESSION

March 18, 2013

TO: Honorable Harvey Hilderbran, Chair, House Committee On Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1223 by Hilderbran (Relating to tax incentives with respect to certain data centers.),
As Introduced

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill during the 2014-15 biennium. The bill would alter the overall distribution of the state tax burden in future biennium, as the sales tax refunds for qualifying data centers grew in future years.

Source Agencies:

LBB Staff: UP, KK